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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/943,914	08/31/2001	Donald J. Remboski	IA00012	2193

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MOTOROLA, INC.
CORPORATE LAW DEPARTMENT - #56-238
3102 NORTH 56TH STREET
PHOENIX, AZ 85018

EXAMINER

LOUIS JACQUES, JACQUES H

ART UNIT	PAPER NUMBER
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3661

DATE MAILED: 03/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/943,914

Applicant(s)

REMBOSKI ET AL.

Examiner

Jacques H. Louis-Jacques

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

2. Claims 1-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Muller et al [6,389,468].

Muller et al [6,389,468] discloses a method and apparatus de distributing network traffic processing on a multiprocessor computer. According to Mullet al, a plurality of computers (devices) is communicatively coupled by an active network, where a data packet is provided for communicating data between the computers or devices. As depicted in figure 2 and described in the specification at pages 12-13, the data packet comprises a header portion, a data portion, a trailer portion and an active portion. According further to Muller et al, the active portion of the data packet is integrated with either the header portion, or the data portion o the trailer portion. See column 2. Furthermore, as described in column 6, for example, the active portion of the data packet comprises a plurality of active network elements coupled by connection media, wherein

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the active portion contains active data related to the configuration of the active network elements. Still in column 6, the active network elements can be a switch, a router or a bridge. As described in column 9, for example, Muller et al discloses a packet state, wherein the active network is operable to communicate the data packet correspond to the packet state. See also columns 11-12. The apparatus of Muller et al can be used as in a vehicle. Although specific portions of the Muller et al patent have been referred to, other sections are applicable as well.

3. Claims 1-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Macera et al [5,490,252].

Macera et al discloses a system having central processor for transmitting packets to another processor, wherein the processors (devices) are communicatively coupled by an active network and a data packet is provided for communication of data between the processors. According to Macera et al, the data packet includes a header portion, a data portion, a trailer portion and an active portion. Macera et al also discloses that the active portion includes a plurality of active network elements, wherein the active portion contains active data related to the configuration of the active network elements, and wherein at least one of the active network elements comprise a switch, a bridge or a router. See columns 1, 3-4 and 15-16. additionally, Macera et al discloses that the active portion contains active network timing information. See column 2. In addition, Macera et al discloses a packet state, wherein the active network is operable to communicate the data

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packet correspond to the packet state, and that the active portion of the data packet can be integrated with either the header portion, or the data portion o the trailer portion.

Response to Arguments

4. Applicant's arguments filed 10/29/02 have been fully considered but they are not persuasive.

Applicant argued, "Applicant's independent claim 1 calls for, among other things, a vehicle comprising a first device and a second device being communicatively coupled by an active network". Applicant then contended, "the rejection is unsupported and should be withdrawn" because neither Mancera et al not Muller et al " discloses "all elements" of the claim. Emphasis added.

First, the examiner agrees that the rejection using the Mancera et al patent is a 102(b) rejection. The examiner acknowledges and appreciates Applicant's remarks. However, this is a typo, which does not change the content and support of the body of the rejection.

Second, it appears that Applicant argued that patents to Mancera et al and Muller et al are not related to a vehicle having a network by which a first and second device are being communicatively coupled.

In that regard, it is noted that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir.

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1992). In this case, both patents (Mancera et al and Muller et al” deal with coupling a plurality (at least two) devices though a network, wherein a data packet, comprising a header, a data portion, a trailer portion and an active portion, is communicated between the device.

In another respect, it is noted that the limitation “a vehicle comprising a first device and second device” is a mere intended use^d. It has been held that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

In yet another respect, the limitation “a vehicle comprising a first device and second device” is merely recited in the preamble and has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

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In light of the foregoing, the claims remain rejected and this office action is made final.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

4,825,362	Minami et al	Apr. 1989
5,856,976	Hirano	Jan. 1999
US 2001/0051863 A1	Razavi et al	Dec. 2001

Each the above cited prior art references relates a vehicle comprising at least two devices that are communicatively coupled though a network.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacques H. Louis-Jacques whose telephone number is (703) 305-9757. The examiner can normally be reached on M-Th, 7:30 AM - 4:00 PM (Eastern Time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William A. Cuchlinski can be reached on (703) 308-3873. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1111.

Jacques H. Louis-Jacques
Primary Examiner
Art Unit 3661

/jlj
February 26, 2003

Jacques H. Louis-Jacques
JACQUES H. LOUIS-JACQUES
PRIMARY EXAMINER